

AMENDED IN ASSEMBLY FEBRUARY 6, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 44

Introduced by Assembly Member Pacheco

December 2, 2002

An act to amend Section 2625 of the Penal Code, and Sections 294 and 366.21 of the Welfare and Institutions Code, relating to dependent children, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 44, as amended, Pacheco. Dependent children: juvenile court hearings.

Existing law provides for the notification of various parties regarding juvenile court proceedings to determine, review, revise, or terminate the status of a child as a dependent child of the court. Chapter 416 of the Statutes of 2002, operative January 1, 2003, revised and recast those notice provisions. Chapter 918 of the Statutes of 2002, operative January 1, 2003, did not incorporate those revisions.

This bill would incorporate and reference the revisions in the notice provisions that are contained in Chapter 416 of the Statutes of 2002. *The bill would further recast related service of notice provisions to require service of notice at least 30 days, rather than 45 days, before the date of a hearing in cases where publication is ordered. The bill would also permit notice of continuation of specified hearings by any means that the court determines is reasonably calculated to provide notice, or as specified. The bill would make other nonsubstantive, technical changes to these provisions.*

Because this bill would increase the duties of local social workers and probation officers, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. *Section 2625 of the Penal Code is amended to*
- 2 *read:*
- 3 2625. (a) For the purposes of this section only, the term
- 4 “prisoner” includes any individual in custody in a state prison, the
- 5 California Rehabilitation Center, or a county jail, or who is a ward
- 6 of the Department of the Youth Authority or who, upon a verdict
- 7 or finding that the individual was insane at the time of committing
- 8 an offense, or mentally incompetent to be tried or adjudged to
- 9 punishment, is confined in a state hospital for the care and
- 10 treatment of the mentally disordered or in any other public or
- 11 private treatment facility.
- 12 (b) In any proceeding brought under Part 4 (commencing with
- 13 Section 7800) of Division 12 of the Family Code, and Section
- 14 366.26 of the Welfare and Institutions Code, where the proceeding
- 15 seeks to terminate the parental rights of any prisoner, or any
- 16 proceeding brought under Section 300 of the Welfare and
- 17 Institutions Code, where the proceeding seeks to adjudicate the
- 18 child of a prisoner a dependent child of the court, the superior court
- 19 of the county in which the proceeding is pending, or a judge



1 thereof, shall order notice of any court proceeding regarding the
2 proceeding transmitted to the prisoner.

3 (c) Service of notice shall be made pursuant to Section 7881 or
4 7882 of the Family Code or Section ~~337 or 366.23~~ 290.2, 291, or
5 294 of the Welfare and Institutions Code, as appropriate.

6 (d) Upon receipt by the court of a statement from the prisoner
7 or his or her attorney indicating the prisoner's desire to be present
8 during the court's proceedings, the court shall issue an order for the
9 temporary removal of the prisoner from the institution, and for the
10 prisoner's production before the court. No proceeding may be held
11 under Part 4 (commencing with Section 7800) of Division 12 of
12 the Family Code or Section 366.26 of the Welfare and Institutions
13 Code and no petition to adjudge the child of a prisoner a dependent
14 child of the court pursuant to subdivision (a), (b), (c), (d), (e), (f),
15 (i), or (j) of Section 300 of the Welfare and Institutions Code may
16 be adjudicated without the physical presence of the prisoner or the
17 prisoner's attorney, unless the court has before it a knowing waiver
18 of the right of physical presence signed by the prisoner or an
19 affidavit signed by the warden, superintendent, or other person in
20 charge of the institution, or his or her designated representative
21 stating that the prisoner has, by express statement or action,
22 indicated an intent not to appear at the proceeding.

23 (e) In any other action or proceeding in which a prisoner's
24 parental or marital rights are subject to adjudication, an order for
25 the prisoner's temporary removal from the institution and for the
26 prisoner's production before the court may be made by the
27 superior court of the county in which the action or proceeding is
28 pending, or by a judge thereof. A copy of the order shall be
29 transmitted to the warden, superintendent, or other person in
30 charge of the institution not less than 15 days before the order is
31 to be executed. The order shall be executed by the sheriff of the
32 county in which it shall be made, whose duty it shall be to bring
33 the prisoner before the proper court, to keep the prisoner safely,
34 and when the prisoner's presence is no longer required, to return
35 the prisoner to the institution from which he or she was taken. The
36 expense of executing the order shall be a proper charge against,
37 and shall be paid by, the county in which the order shall be made.

38 The order shall be to the following effect:

39
40 County of ____ (as the case may be).

1 The people of the State of California to the warden of ____:

2 An order having been made this day by me, that A. B. be
3 produced in this court as a party in the case of ____, you are
4 commanded to deliver A. B. into the custody of ____ for the
5 purpose of (recite purposes).

6 Dated this ____ day of ____, 19__.

7
8 (f) When a prisoner is removed from the institution pursuant to
9 this section, the prisoner shall remain in the constructive custody
10 of the warden, superintendent, or other person in charge of the
11 institution.

12 (g) Notwithstanding any other law, a court may not order the
13 removal and production of a prisoner sentenced to death, whether
14 or not that sentence is being appealed, in any action or proceeding
15 in which the prisoner's parental rights are subject to adjudication.

16 *SEC. 2. Section 294 of the Welfare and Institutions Code is*
17 *amended to read:*

18 294. The social worker or probation officer shall give notice
19 of a selection and implementation hearing held pursuant to Section
20 366.26 in the following manner:

21 (a) Notice of the hearing shall be given to the following
22 persons:

23 (1) The mother.

24 (2) The fathers, presumed and alleged.

25 (3) The child, if the child is 10 years of age or older.

26 (4) The grandparents of the child, if their address is known and
27 if the parent's whereabouts are unknown.

28 (5) All counsel of record.

29 (6) If the court knows or has reason to know that an Indian child
30 is involved, then to the Indian custodian and the tribe of that child.
31 If the identity or location of the parent or Indian custodian and the
32 tribe cannot be determined, notice shall be given to the Bureau of
33 Indian Affairs.

34 (b) The following persons shall not be notified of the hearing:

35 (1) A parent who has relinquished the child to the State
36 Department of Social Services or to a licensed adoption agency for
37 adoption, and the relinquishment has been accepted and filed with
38 notice as required under Section 8700 of the Family Code.

39 (2) An alleged father who has denied paternity and has
40 executed a waiver of the right to notice of further proceedings.

1 (3) A parent whose parental rights have been terminated.

2 (c) (1) Service of the notice shall be completed at least 45 days
3 before the hearing date. Service is deemed complete at the time the
4 notice is personally delivered to the person named in the notice or
5 10 days after the notice has been placed in the mail, or at the
6 expiration of the time prescribed by the order for publication.

7 (2) In the case of an Indian child, notice to the Indian custodian
8 and the tribe shall be completed at least 10 days before the hearing.

9 (3) In the case of an Indian child, if notice is given to the Bureau
10 of Indian Affairs, the bureau shall have 15 days after receipt to
11 provide the requisite notice to the parent or Indian custodian and
12 the tribe.

13 (4) *Service of notice in cases where publication is ordered shall*
14 *be completed at least 30 days before the date of the hearing.*

15 (d) Regardless of the type of notice required, or the manner in
16 which it is served, once the court has made the initial finding that
17 notice has properly been given to the parent, or to any person
18 entitled to receive notice pursuant to this section, subsequent
19 notice for any continuation of a Section 366.26 hearing may be by
20 first-class mail to any last known address, *by an order made*
21 *pursuant to Section 296, or by any other means that the court*
22 *determines is reasonably calculated, under any circumstance, to*
23 *provide notice of the continued hearing.* However, if the
24 recommendation changes from the recommendation contained in
25 the notice previously found to be proper, notice shall be provided
26 to the parent, and to any person entitled to receive notice pursuant
27 to this section, regarding that subsequent hearing.

28 (e) The notice shall contain the following information:

29 (1) The date, time, and place of the hearing.

30 (2) The right to appear.

31 (3) The parents' right to counsel.

32 (4) The nature of the proceedings.

33 (5) The recommendation of the supervising agency.

34 (6) A statement that, at the time of hearing, the court is required
35 to select a permanent plan of adoption, legal guardianship, or
36 long-term foster care for the child.

37 (7) In the case of an Indian child, the notice shall contain a
38 statement that the parent or Indian custodian and the tribe have a
39 right to intervene at any point in the proceedings. The notice shall
40 also include a statement that the parent or Indian custodian and the

1 tribe shall, upon request, be granted up to 20 additional days to
2 prepare for the proceedings.

3 (f) Notice to the parents may be given in any one of the
4 following manners:

5 (1) If the parent is present at the hearing at which the court
6 schedules a hearing pursuant to Section 366.26, the court shall
7 advise the parent of the date, time, and place of the proceedings,
8 their right to counsel, the nature of the proceedings, and the
9 requirement that at the proceedings the court shall select and
10 implement a plan of adoption, legal guardianship, or long-term
11 foster care for the child. The court shall direct the parent to appear
12 for the proceedings and then direct that the parent be notified
13 thereafter by first-class mail to the parent's usual place of
14 residence or business only.

15 (2) Certified mail return receipt requested to the parent's last
16 known mailing address. This notice shall be sufficient if the child
17 welfare agency receives a return receipt signed by the parent.

18 (3) Personal service to the parent named in the notice.

19 (4) Delivery to a competent person who is at least 18 years of
20 age at the parent's usual place of residence or business, and
21 thereafter mailed to the parent named in the notice by first-class
22 mail at the place where the notice was delivered.

23 (5) If the residence of the parent is outside the state, service may
24 be made as described in paragraph (1), (3), or (4) or by certified
25 mail, return receipt requested.

26 (6) If the recommendation of the probation officer or social
27 worker is legal guardianship or long-term foster care, service may
28 be made by first-class mail to the parent's usual place of residence
29 or business.

30 (7) If the parent's whereabouts are unknown and the parent
31 cannot, with reasonable diligence, be served in any manner
32 specified in paragraphs (1) to (6), inclusive, the petitioner shall file
33 an affidavit with the court at least 75 days before the hearing date,
34 stating the name of the parent and describing the efforts made to
35 locate and serve the parent.

36 (A) If the court determines that there has been due diligence in
37 attempting to locate and serve the parent and the probation officer
38 or social worker recommends adoption, service shall be to that
39 parent's attorney of record, if any, by certified mail, return receipt
40 requested. If the parent does not have an attorney of record, the

1 court shall order that service be made by publication of citation
2 requiring the parent to appear at the date, time, and place stated in
3 the citation, and that the citation be published in a newspaper
4 designated as most likely to give notice to the parent. Publication
5 shall be made once a week for four consecutive weeks. Whether
6 notice is to the attorney of record or by publication, the court shall
7 also order that notice be given to the grandparents of the child by
8 first-class mail.

9 (B) If the court determines that there has been due diligence in
10 attempting to locate and serve the parent and the probation officer
11 or social worker recommends legal guardianship or long-term
12 foster care, no further notice is required to the parent, but the court
13 shall order that notice be given to the grandparents of the child by
14 first-class mail.

15 (C) In any case where the residence of the parent becomes
16 known, notice shall immediately be served upon the parent as
17 provided for in either paragraph (2), (3), (4), (5), or (6).

18 (8) If the identity of one or both of the parents, or alleged
19 parents, of the child is unknown, or if the name of one or both
20 parents is uncertain, then that fact shall be set forth in the affidavit
21 and the court, if ordering publication, shall order the published
22 citation to be directed to either the father or mother, or both, of the
23 child, and to all persons claiming to be the father or mother of the
24 child, naming and otherwise describing the child.

25 (g) Notice to the child and all counsel of record shall be by
26 first-class mail.

27 (h) In the case of an Indian child, notice to the tribe shall be by
28 registered mail, return receipt requested.

29 (i) Notwithstanding subdivision (a), if the attorney of record is
30 present at the time the court schedules a hearing pursuant to
31 Section 366.26, no further notice is required, except as required by
32 subparagraph (A) of paragraph (7) of subdivision (f).

33 (j) This section shall also apply to children adjudged wards
34 pursuant to Section 727.31.

35 *SEC. 3.* Section 366.21 of the Welfare and Institutions Code
36 is amended to read:

37 366.21. (a) Every hearing conducted by the juvenile court
38 reviewing the status of a dependent child shall be placed on the
39 appearance calendar. The court shall advise all persons present at

1 the hearing of the date of the future hearing and of their right to be
2 present and represented by counsel.

3 (b) Except as provided in Sections 294 and 295, notice of the
4 hearing shall be provided pursuant to Section 293.

5 (c) At least 10 calendar days prior to the hearing, the social
6 worker shall file a supplemental report with the court regarding the
7 services provided or offered to the parent or legal guardian to
8 enable him or her to assume custody and the efforts made to
9 achieve legal permanence for the child if efforts to reunify fail, the
10 progress made, and, where relevant, the prognosis for return of the
11 child to the physical custody of his or her parent or legal guardian,
12 and shall make his or her recommendation for disposition. If the
13 child is a member of a sibling group described in paragraph (3) of
14 subdivision (a) of Section 361.5, the report and recommendation
15 may also take into account those factors described in subdivision
16 (e) relating to the child's sibling group. If the recommendation is
17 not to return the child to a parent or legal guardian, the report shall
18 specify why the return of the child would be detrimental to the
19 child. The social worker shall provide the parent or legal guardian
20 and counsel for the child with a copy of the report, including his
21 or her recommendation for disposition, at least 10 calendar days
22 prior to the hearing. In the case of a child removed from the
23 physical custody of his or her parent or legal guardian, the social
24 worker shall, at least 10 calendar days prior to the hearing, provide
25 a summary of his or her recommendation for disposition to any
26 court-appointed child advocate, and any foster parents, relative
27 caregivers, certified foster parents who have been approved for
28 adoption by the State Department of Social Services when it is
29 acting as an adoption agency in counties that are not served by a
30 county adoption agency or by a licensed county adoption agency,
31 community care facility, or foster family agency having the
32 physical custody of the child.

33 (d) Prior to any hearing involving a child in the physical
34 custody of a community care facility or a foster family agency that
35 may result in the return of the child to the physical custody of his
36 or her parent or legal guardian, or in adoption or the creation of a
37 legal guardianship, the facility or agency shall file with the court
38 a report containing its recommendation for disposition. Prior to the
39 hearing involving a child in the physical custody of a foster parent,
40 a relative caregiver, or a certified foster parent who has been

1 approved for adoption by the State Department of Social Services
2 when it is acting as an adoption agency or by a licensed adoption
3 agency, the foster parent, relative caregiver, or the certified foster
4 parent who has been approved for adoption by the State
5 Department of Social Services when it is acting as an adoption
6 agency in counties that are not served by a county adoption agency
7 or by a licensed county adoption agency, may file with the court
8 a report containing his or her recommendation for disposition. The
9 court shall consider the report and recommendation filed pursuant
10 to this subdivision prior to determining any disposition.

11 (e) At the review hearing held six months after the initial
12 dispositional hearing, the court shall order the return of the child
13 to the physical custody of his or her parent or legal guardian unless
14 the court finds, by a preponderance of the evidence, that the return
15 of the child to his or her parent or legal guardian would create a
16 substantial risk of detriment to the safety, protection, or physical
17 or emotional well-being of the child. The social worker shall have
18 the burden of establishing that detriment. The failure of the parent
19 or legal guardian to participate regularly and make substantive
20 progress in court-ordered treatment programs shall be prima facie
21 evidence that return would be detrimental. In making its
22 determination, the court shall review and consider the social
23 worker's report and recommendations and the report and
24 recommendations of any child advocate appointed pursuant to
25 Section 356.5; and shall consider the efforts or progress, or both,
26 demonstrated by the parent or legal guardian and the extent to
27 which he or she availed himself or herself of services provided.

28 Whether or not the child is returned to a parent or legal guardian,
29 the court shall specify the factual basis for its conclusion that the
30 return would be detrimental or would not be detrimental. The court
31 also shall make appropriate findings pursuant to subdivision (a) of
32 Section 366; and, where relevant, shall order any additional
33 services reasonably believed to facilitate the return of the child to
34 the custody of his or her parent or legal guardian. The court shall
35 also inform the parent or legal guardian that if the child cannot be
36 returned home by the 12-month permanency hearing, a proceeding
37 pursuant to Section 366.26 may be instituted. This section does not
38 apply in a case where, pursuant to Section 361.5, the court has
39 ordered that reunification services shall not be provided.

1 If the child was under the age of three years on the date of the
2 initial removal, or is a member of a sibling group described in
3 paragraph (3) of subdivision (a) of Section 361.5, and the court
4 finds by clear and convincing evidence that the parent failed to
5 participate regularly and make substantive progress in a
6 court-ordered treatment plan, the court may schedule a hearing
7 pursuant to Section 366.26 within 120 days. If, however, the court
8 finds there is a substantial probability that the child, who was under
9 the age of three years on the date of initial removal or is a member
10 of a sibling group described in paragraph (3) of subdivision (a) of
11 Section 361.5, may be returned to his or her parent or legal
12 guardian within six months or that reasonable services have not
13 been provided, the court shall continue the case to the 12-month
14 permanency hearing.

15 For the purpose of placing and maintaining a sibling group
16 together in a permanent home, the court, in making its
17 determination to schedule a hearing pursuant to Section 366.26 for
18 some or all members of a sibling group, as described in paragraph
19 (3) of subdivision (a) of Section 361.5, shall review and consider
20 the social worker's report and recommendations. Factors the
21 report shall address, and the court shall consider, may include, but
22 need not be limited to, whether the sibling group was removed
23 from parental care as a group, the closeness and strength of the
24 sibling bond, the ages of the siblings, the appropriateness of
25 maintaining the sibling group together, the detriment to the child
26 if sibling ties are not maintained, the likelihood of finding a
27 permanent home for the sibling group, whether the sibling group
28 is currently placed together in a preadoptive home or has a
29 concurrent plan goal of legal permanency in the same home, the
30 wishes of each child whose age and physical and emotional
31 condition permits a meaningful response, and the best interest of
32 each child in the sibling group. The court shall specify the factual
33 basis for its finding that it is in the best interest of each child to
34 schedule a hearing pursuant to Section 366.26 in 120 days for some
35 or all of the members of the sibling group.

36 If the child was removed initially under subdivision (g) of
37 Section 300 and the court finds by clear and convincing evidence
38 that the whereabouts of the parent are still unknown, or the parent
39 has failed to contact and visit the child, the court may schedule a
40 hearing pursuant to Section 366.26 within 120 days. If the court



1 finds by clear and convincing evidence that the parent has been
2 convicted of a felony indicating parental unfitness, the court may
3 schedule a hearing pursuant to Section 366.26 within 120 days.

4 If the child had been placed under court supervision with a
5 previously noncustodial parent pursuant to Section 361.2, the
6 court shall determine whether supervision is still necessary. The
7 court may terminate supervision and transfer permanent custody
8 to that parent, as provided for by paragraph (1) of subdivision (b)
9 of Section 361.2.

10 In all other cases, the court shall direct that any reunification
11 services previously ordered shall continue to be offered to the
12 parent or legal guardian pursuant to the time periods set forth in
13 subdivision (a) of Section 361.5, provided that the court may
14 modify the terms and conditions of those services.

15 If the child is not returned to his or her parent or legal guardian,
16 the court shall determine whether reasonable services that were
17 designed to aid the parent or legal guardian in overcoming the
18 problems that led to the initial removal and the continued custody
19 of the child have been provided or offered to the parent or legal
20 guardian. The court shall order that those services be initiated,
21 continued, or terminated.

22 (f) The permanency hearing shall be held no later than 12
23 months after the date the child entered foster care, as that date is
24 determined pursuant to subdivision (a) of Section 361.5. At the
25 permanency hearing, the court shall determine the permanent plan
26 for the child, which shall include a determination of whether the
27 child will be returned to the child's home and, if so, when, within
28 the time limits of subdivision (a) of Section 361.5. The court shall
29 order the return of the child to the physical custody of his or her
30 parent or legal guardian unless the court finds, by a preponderance
31 of the evidence, that the return of the child to his or her parent or
32 legal guardian would create a substantial risk of detriment to the
33 safety, protection, or physical or emotional well-being of the child.
34 The social worker shall have the burden of establishing that
35 detriment. The court shall also determine whether reasonable
36 services that were designed to aid the parent or legal guardian to
37 overcome the problems that led to the initial removal and
38 continued custody of the child have been provided or offered to the
39 parent or legal guardian. For each youth 16 years of age and older,
40 the court shall also determine whether services have been made

1 available to assist him or her in making the transition from foster
2 care to independent living. The failure of the parent or legal
3 guardian to participate regularly and make substantive progress in
4 court-ordered treatment programs shall be prima facie evidence
5 that return would be detrimental. In making its determination, the
6 court shall review and consider the social worker's report and
7 recommendations and the report and recommendations of any
8 child advocate appointed pursuant to Section 356.5, shall consider
9 the efforts or progress, or both, demonstrated by the parent or legal
10 guardian and the extent to which he or she availed himself or
11 herself of services provided, and shall make appropriate findings
12 pursuant to subdivision (a) of Section 366.

13 Whether or not the child is returned to his or her parent or legal
14 guardian, the court shall specify the factual basis for its decision.
15 If the child is not returned to a parent or legal guardian, the court
16 shall specify the factual basis for its conclusion that the return
17 would be detrimental. The court also shall make a finding pursuant
18 to subdivision (a) of Section 366.

19 (g) If the time period in which the court-ordered services were
20 provided has met or exceeded the time period set forth in
21 paragraph (1), (2), or (3) of subdivision (a) of Section 361.5, as
22 appropriate, and a child is not returned to the custody of a parent
23 or legal guardian at the permanency hearing held pursuant to
24 subdivision (f), the court shall do one of the following:

25 (1) Continue the case for up to six months for a permanency
26 review hearing, provided that the hearing shall occur within 18
27 months of the date the child was originally taken from the physical
28 custody of his or her parent or legal guardian. The court shall
29 continue the case only if it finds that there is a substantial
30 probability that the child will be returned to the physical custody
31 of his or her parent or legal guardian and safely maintained in the
32 home within the extended period of time or that reasonable
33 services have not been provided to the parent or legal guardian. For
34 the purposes of this section, in order to find a substantial
35 probability that the child will be returned to the physical custody
36 of his or her parent or legal guardian and safely maintained in the
37 home within the extended period of time, the court shall be
38 required to find all of the following:

39 (A) That the parent or legal guardian has consistently and
40 regularly contacted and visited with the child.



1 (B) That the parent or legal guardian has made significant
2 progress in resolving problems that led to the child's removal from
3 the home.

4 (C) The parent or legal guardian has demonstrated the capacity
5 and ability both to complete the objectives of his or her treatment
6 plan and to provide for the child's safety, protection, physical and
7 emotional well-being, and special needs.

8 For purposes of this subdivision, the court's decision to continue
9 the case based on a finding or substantial probability that the child
10 will be returned to the physical custody of his or her parent or legal
11 guardian is a compelling reason for determining that a hearing held
12 pursuant to Section 366.26 is not in the best interests of the child.

13 The court shall inform the parent or legal guardian that if the
14 child cannot be returned home by the next permanency review
15 hearing, a proceeding pursuant to Section 366.36 may be
16 instituted. The court shall not order that a hearing pursuant to
17 Section 366.26 be held unless there is clear and convincing
18 evidence that reasonable services have been provided or offered to
19 the parent or legal guardian.

20 (2) Order that a hearing be held within 120 days, pursuant to
21 Section 366.26, but only if the court does not continue the case to
22 the permanency planning review hearing and there is clear and
23 convincing evidence that reasonable services have been provided
24 or offered to the parents or legal guardians.

25 (3) Order that the child remain in long-term foster care, but
26 only if the court finds by clear and convincing evidence, based
27 upon the evidence already presented to it, including a
28 recommendation by the State Department of Social Services when
29 it is acting as an adoption agency in counties that are not served by
30 a county adoption agency or by a licensed county adoption agency,
31 that there is a compelling reason for determining that a hearing
32 held pursuant to Section 366.26 is not in the best interest of the
33 child because the child is not a proper subject for adoption and has
34 no one willing to accept legal guardianship. For purposes of this
35 section, a recommendation by the State Department of Social
36 Services when it is acting as an adoption agency in counties that
37 are not served by a county adoption agency or by a licensed county
38 adoption agency that adoption is not in the best interest of the child
39 shall constitute a compelling reason for the court's determination.
40 That recommendation shall be based on the present circumstances

1 of the child and shall not preclude a different recommendation at
2 a later date if the child's circumstances change.

3 (h) In any case in which the court orders that a hearing pursuant
4 to Section 366.26 shall be held, it shall also order the termination
5 of reunification services to the parent or legal guardian. The court
6 shall continue to permit the parent or legal guardian to visit the
7 child pending the hearing unless it finds that visitation would be
8 detrimental to the child.

9 (i) Whenever a court orders that a hearing pursuant to Section
10 366.26 shall be held, it shall direct the agency supervising the child
11 and the licensed county adoption agency, or the State Department
12 of Social Services when it is acting as an adoption agency in
13 counties that are not served by a county adoption agency, to
14 prepare an assessment that shall include:

15 (1) Current search efforts for an absent parent or parents or
16 legal guardians.

17 (2) A review of the amount of and nature of any contact
18 between the child and his or her parents or legal guardians and
19 other members of his or her extended family since the time of
20 placement. Although the extended family of each child shall be
21 reviewed on a case-by-case basis, "extended family" for the
22 purpose of this paragraph shall include, but not be limited to, the
23 child's siblings, grandparents, aunts, and uncles.

24 (3) An evaluation of the child's medical, developmental,
25 scholastic, mental, and emotional status.

26 (4) A preliminary assessment of the eligibility and
27 commitment of any identified prospective adoptive parent or legal
28 guardian, particularly the caretaker, to include a social history
29 including screening for criminal records and prior referrals for
30 child abuse or neglect, the capability to meet the child's needs, and
31 the understanding of the legal and financial rights and
32 responsibilities of adoption and guardianship. If a proposed
33 guardian is a relative of the minor, and the relative was assessed
34 for foster care placement of the minor prior to January 1, 1998, the
35 assessment shall also consider, but need not be limited to, all of the
36 factors specified in subdivision (a) of Section 361.3.

37 (5) The relationship of the child to any identified prospective
38 adoptive parent or legal guardian, the duration and character of the
39 relationship, the motivation for seeking adoption or guardianship,
40 and a statement from the child concerning placement and the

1 adoption or guardianship, unless the child's age or physical,
2 emotional, or other condition precludes his or her meaningful
3 response, and if so, a description of the condition.

4 (6) An analysis of the likelihood that the child will be adopted
5 if parental rights are terminated.

6 (j) If, at any hearing held pursuant to Section 366.26, a
7 guardianship is established for the minor with a relative, and
8 juvenile court dependency is subsequently dismissed, the relative
9 shall be eligible for aid under the Kin-GAP program as provided
10 in Article 4.5 (commencing with Section 11360) of Chapter 2 of
11 Part 3 of Division 9.

12 (k) As used in this section, "relative" means an adult who is
13 related to the minor by blood, adoption, or affinity within the fifth
14 degree of kinship, including stepparents, stepsiblings, and all
15 relatives whose status is preceded by the words "great,"
16 "great-great," or "grand," or the spouse of any of those persons
17 even if the marriage was terminated by death or dissolution.

18 (l) For purposes of this section, evidence of any of the
19 following circumstances shall not, in and of itself, be deemed a
20 failure to provide or offer reasonable services:

21 (1) The child has been placed with a foster family that is
22 eligible to adopt a child, or has been placed in a preadoptive home.

23 (2) The case plan includes services to make and finalize a
24 permanent placement for the child if efforts to reunify fail.

25 (3) Services to make and finalize a permanent placement for
26 the child, if efforts to reunify fail, are provided concurrently with
27 services to reunify the family.

28 **SEC. 2.—**

29 *SEC. 4. Notwithstanding Section 17610 of the Government*
30 *Code, if the Commission on State Mandates determines that this*
31 *act contains costs mandated by the state, reimbursement to local*
32 *agencies and school districts for those costs shall be made*
33 *pursuant to Part 7 (commencing with Section 17500) of Division*
34 *4 of Title 2 of the Government Code. If the statewide cost of the*
35 *claim for reimbursement does not exceed one million dollars*
36 *(\$1,000,000), reimbursement shall be made from the State*
37 *Mandates Claims Fund.*

38 *SEC. 5. This act is an urgency statute necessary for the*
39 *immediate preservation of the public peace, health, or safety*

1 within the meaning of Article IV of the Constitution and shall go
2 into immediate effect. The facts constituting the necessity are:
3 Chapters 416 and 918 of the Statutes of 2002 amended the law
4 governing notice in dependency proceedings. Those chapters
5 failed to make conforming code reference changes. Without
6 conforming legislation, the Welfare and Institutions Code contains
7 conflicting notice provisions. This conflict will result in confusion
8 among courts, attorneys, case workers, and those affected by
9 dependency proceedings. That confusion could affect the rights of
10 both children and their parents or guardians. Immediate action is
11 necessary to eliminate this conflict.

